

State of the Judiciary
Chief Justice Cornelia A. Clark, Tennessee Supreme Court
Message to the Tennessee Press Association
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Welcome & Introductions

Members of the Tennessee Press Association and special guests – it is an honor and privilege to speak with you today.

I recognize that it is a rare occasion to find a judge, let alone a Supreme Court justice, in a room full of reporters. Given the nature of the courts, it can be difficult for a judge to engage in a dialogue with the press.

However, I do welcome this opportunity to speak with you about the courts in Tennessee, the challenges we face as a judiciary, and how the judges and journalists can work together to further educate the public about the third and equal branch of government. I believe the state of the judiciary is strong; but its greatest weakness is the lack of understanding by the general public.

The Importance of public awareness about the judiciary

Although the courts and the press can sometimes be at odds, our worlds are not too different. Both journalists and the judiciary face considerable changes as the world around us evolves at a rapid pace.

Printed papers and magazines are quickly giving way to online media. And, with the advent of social networking, news can be broken with a mere 140 characters. Deadlines are getting shorter, news is getting faster; and, like many other businesses, you are forced to do all of this with less and less.

Likewise, the courts face an expectation of immediacy and instant online access to everything from dockets to court opinions. And, just like you, our staff members have taken to tweeting the release of a new opinion or important announcement.

With all of these advances, comes its own set of challenges. The media is now chasing attention in a world where there are so many distractions and competing ways to get information. Yet, the need for factual reporting and clear analysis of important issues has never been greater.

And the courts are fighting to keep up in a world that is moving at a breakneck pace. Justice is many things, but oftentimes, it is not swift. Certainly, litigation sometimes takes too long, costs too much, and is too complicated. The public grows weary of this without fully understanding that the careful march of fair and equal justice takes time and deliberation.

The courts also face a crisis of an undereducated population that does not understand the rule of law and the constitutional obligation of the judicial branch to protect the rights guaranteed by our founding fathers. Sadly, the operation of our courts remains a mystery to those who have not passed through our doors as many Tennesseans today don't have the benefit of a required civics education.

But, Tennesseans are not alone. In a recent survey by Findlaw.com, only 35 percent of Americans could name one U.S. Supreme Court justice and a mere ONE PERCENT of Americans could name all nine justices.

Meanwhile, I am quite certain a majority of Americans could name the judges of American Idol or Dancing with the Stars.

This sad reality plagues not only our justice system, but government in general. As a former educator, I firmly believe that education leads to a more informed and engaged society.

The media plays an integral role in informing and educating the public about how the system works, and when it doesn't. A number of you spend considerable time in our courtrooms, and for that, we are grateful.

The courts rely on those of you in this room to convey the work we do as arbiters of justice. It is up to you to make the people in this state aware of the battles that take place in the hallowed halls of justice each and every day.

Admittedly, the law and our courts can be complicated and difficult to understand. And, the issues that we face are rarely black and white. The challenge in covering the courts is that there is not always a clear winner or loser. Despite all of this, emphasis must still be placed on getting it right. We place this important task in your hands and we are committed to working with you to help Tennesseans better understand the essential role the courts play in state government.

How the budget shortfall has impacted the courts

One of our current challenges as a judiciary is an ever-shrinking budget. The judiciary, like the other branches of government, has had to make difficult decisions to help ease the state's budget deficit while continuing to serve the public.

At the governor's request, we have reduced our recurring budget by more than 21 percent in the past two years. Although our budget makes up less than half a percent of the state's overall budget, these reductions have had a profound impact on how we operate the court system.

As part of these reductions, we have eliminated almost 40 positions across the state – including appellate court clerks and attorneys, court reporters and staff from the Administrative Office of the Courts. We have also closed the three public law libraries housed in the state's three Supreme Court buildings, reduced our office space and restructured our court reporting and senior judge programs.

Despite these budget cuts, I am proud to say that the members of the judiciary have done an excellent job of pulling together to ensure that Tennesseans continue to receive superior service in our courtrooms across the state.

While it is regrettable to make budget cuts, we are committed to sharing the responsibility for trimming the state's budget. We have learned to do more with less, and we are committed to maintaining the same level of service regardless of the additional budget reductions we may have to make for the next fiscal year.

Improving Access to Justice in our state

The nation's economic crisis has also furthered the need for access to justice. Now, more than ever, low-income Tennesseans are unable to obtain the necessary legal assistance when encountering civil matters.

In today's troubled economic climate, the need for civil legal services among Tennessee's indigent and working poor families can only be expected to increase as they face legal problems caused by unemployment, predatory loans, uninsured medical bills, domestic violence, evictions, and foreclosures. The issues confronting low-income people require new solutions and an increased need for existing services.

It is a common misconception that low-income citizens are entitled to legal assistance for civil matters, in addition to criminal issues. Sadly, this is not the case. Only one in five income-eligible people will receive the legal help they need.

We have 75 very dedicated legal aid attorneys in Tennessee, but they simply are not able to assist all of the many low-income Tennesseans who encounter legal problems on a daily basis. While legal aid groups, law schools, bar associations and law firms that have worked diligently to address this issue, there is still much work that must be done to tackle the unmet legal needs of

Tennesseans. We must ensure that all people – rich or poor, young or old – have proper access to our court system.

As a result of this legal needs crisis, the Supreme Court has declared Access to Justice our number one strategic priority. Since announcing this initiative in December 2008, we have held public meetings across the state to better understand how the judiciary can better meet the legal needs of low-income citizens.

We also created the Access to Justice Commission, a group of 10 attorneys, business and community leaders, who are serving as our partners in this important endeavor. Under our direction, the Access to Justice Commission developed a strategic plan last year to guide our efforts in the coming years.

We have made a number of rule changes that will encourage more lawyers to provide free or reduced-cost legal advice to those who need it most.

Just a few weeks ago, the Court hosted a statewide pro bono summit with more than 100 of the state's top attorneys and community leaders to discuss ways to improve pro bono efforts across the state. During the event, participants explored a number of issues, such as encouraging increased corporate pro bono program participation, providing legal services to rural areas, expanding assistance to those with language and intellectual disabilities, and collaborating with libraries, faith-based organizations and other community groups to provide needed services.

At the summit, we also announced how we are using new technologies to provide greater access to our courts. In the coming months, we will unveil our Justice for All website, which will provide information about pro bono resources across the state for both pro se litigants and attorneys and community members who are willing to help.

We also announced the development of an attorney email bank that will allow Tennesseans to receive free legal advice from volunteer attorneys. The site will allow users to submit legal questions that can then be answered by volunteer attorneys from across the state. This site, which is being developed by the Tennessee Bar Association and Tennessee Alliance for Legal Services, will be launched this spring.

We are working on our own new, enhanced website that will serve as an important source of information for the public and the media. And we are planning to equip our 3 Supreme Court buildings with technology necessary to allow live video streaming of appellate court arguments.

Although we have made great strides toward our goal of achieving greater access to justice, there is still much work to be done to address the legal needs of low-income citizens.

The importance of fair and impartial courts

The most basic obligation of state courts is to resolve the disputes brought before them. For the good of our citizens and our state, it is of utmost importance that our courts remain fair and impartial. The decisions that are made in our courts can have a considerable impact on the livelihood and wellbeing of individuals, families and businesses. We do not take this responsibility lightly.

As judges, we are bound to follow the constitution and laws of our state and country. We do not have the authority to make decisions as we please. Justice is not the guarantee of a particular outcome in a particular case; it is the assurance that each dispute is resolved based on its facts and within the confines of the law. In this respect we are a lot like referees and umpires.

Does anyone know what Phil Luckett and Jim Joyce have in common?

You might remember Phil Luckett from the Music City Miracle game that landed the Titans in the Super Bowl. Mr. Luckett was the referee who reviewed the instant replay of the infamous kickoff return that resulted in a touchdown for the Titans. After reviewing the play, Mr. Luckett concluded that there was not enough evidence to overturn the ruling on the field that Frank Wycheck made a legal, lateral pass to Kevin Dyson.

Those of us who are Titans fans were thrilled with the outcome and believe Mr. Luckett made the right call. However, I'm quite certain that there are Buffalo Bills fans who, to this day, think otherwise.

Jim Joyce was the umpire for the Tigers and Indians game last year where Detroit Tigers pitcher Armando Gallaraga had almost thrown perfect game. With two outs in the 9th Inning, Gallaraga was one batter away from a perfect game. However, the next batter hit an easy grounder to first base and it appeared that the batter should have been out. But, Mr. Joyce called the batter safe. Although most of us watching the game would agree that Gallaraga threw a perfect game that night, the record books do not reflect that.

Each of these referees had to make some very difficult decisions in each situation. And I'm confident that the referees and umpires had done their best to make the right call on the field, even if we don't always agree with them.

Now, let's consider for a moment if we were able to donate money to elect referees for sporting events. Let's say the Titans ownership paid the largest sum of money and got their guys on the field. Although Titans fans would be thrilled with that, I'm quite certain that the Colts would

have a tough time thinking those particular referees could be unbiased when we played each other.

Judges are a lot like referees. We review decisions made “on the field” and have to make tough calls based on how a particular play follows the rules of the game. Our decisions aren’t always popular and there are bound to be people who disagree, no matter what the outcome. But, we stay true to our commitment to uphold the law.

The people of Tennessee deserve to have their cases heard based without fear of prejudice, politics or pressure from powerful interest groups influencing the outcome. Justice is not served when court decisions are used to advance an agenda or reward a contributor.

Consider what happened in the Caperton v. Massey case that came out of West Virginia, a state that holds partisan elections for its appellate courts. In this case, a \$50 million jury verdict was appealed to the West Virginia Supreme Court of Appeals. A justice on the bench did not recuse himself from the case, despite receiving \$3 Million in campaign funds from the CEO of the lead defendant.

The same justice then cast the deciding vote in favor of his campaign donor’s company, overturning the trial court verdict. The U.S. Supreme Court has since overturned this ruling. Justice Kennedy wrote the majority opinion and stated:

“We conclude that there is a serious risk of actual bias - based on objective and reasonable perceptions - when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.”

The majority of Americans agree with Justice Kennedy. According to a poll by USA Today, More than 90% believe judges should not hear cases involving individuals or groups that contributed to their campaign.

Partisan elections of appellate courts put judges in a precarious position. Despite the best of intentions, it is difficult, if not impossible, to prevent powerful influence from seeping into the courtroom.

Only nine states in the country hold partisan elections for their Supreme Courts. Tennessee is one of 24 states that use a merit selection and retention election system for choosing its Supreme Court justices.

This merit-based system method offers the best of both worlds – the selection of a judge based upon an individual’s qualifications and voter participation following a performance evaluation of each judge.

Should we abandon this system, Tennessee runs the risk of turning into states like Alabama and Illinois where recent campaigns for a single seat on the Supreme Court have topped \$8 million dollars. In these states, just like West Virginia, justice is served to the highest bidder.

As retired Supreme Court Justice Sandra Day O’Connor once stated, “The founders realized there has to be someplace where being right is more important than being popular or powerful, and where fairness trumps strength. And in our country, that place is supposed to be the courtroom.”

Closing and Thanks

In closing, I would like to share a quote by the great Walter Lippman, a Pulitzer Prize winning journalist in the mid-1900s – “He has honor if he holds himself to an ideal of conduct though it is inconvenient, unprofitable, or dangerous to do so.”

I think this statement bears great relevance for both journalists and judges. Our tasks are not always easy and the things we write are not always popular. However, we must stand firm in our commitment to do what’s right and honorable for the people of our great state.

I commend you for the work you do every day to inform and educate the public. We are blessed to live in a nation with a free and independent press. I do not take this privilege lightly, and I’m certain that neither do you.

Even though the courts and the press may not always agree, we both share in the desire to inform and educate the public. I look forward to working with you to further our goals of educating Tennesseans about the importance of courts and government in our state.

Thank you again for the opportunity to speak with you today.